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THE CHURCH

AND

THE CHALLENGE

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## **PARDON, PROBATION AND PAROLE**

Pardon? Probation? Parole? Or what?

What are they? Are they different? Are they necessary?

The purpose of this small booklet is to explain the three concepts, each equally important in the administration of criminal justice and in the treatment of the offender.

More than that, this booklet will attempt to enlist the aid of that section of Society most interested in the moral and ethical well-being of our people. The Pennsylvania Board of Parole believes that its program only can succeed with community support, and the institution that can do much toward encouraging such support is the Church.

Columns of newspaper articles already have been written on how we can fight the growing crime problem. Many advocate a program in which the concepts of executive clemency, probation and parole would virtually disappear from our philosophy and the words themselves probably would vanish from our active vocabulary.

The philosophy of the Judeo-Christian churches has always stressed tolerance and understanding. With the support of the churches, the programs of enlightened treatment of the offender will succeed.

## **EXECUTIVE CLEMENCY AND THE BOARD OF PARDONS**

The executive clemency vested in the Governor and the Board of Pardons is a very ancient concept in Anglo-Saxon law. It is a direct descendent of the royal prerogative of the British Sovereign--the mitigation of the rigor of the law when the hardship of applying it is excessive and exceptional.

The Constitution of Pennsylvania, Article IV, provides:

“Section 9. He (the Governor) shall have the power to remit fines and forfeitures, to grant reprieves, commutations of sentence and pardons, except in cases of impeachment; but no pardon shall be granted, nor sentence commuted, except upon the recommendation in writing of the Lieutenant Governor, the Secretary of the Commonwealth, the Attorney General and the Secretary of Internal Affairs, or any three of them, after full public hearing . . .”

Under this section, the Governor may actually change the sentence of the court, either by commuting or shortening it, or by expunging it completely through a pardon. He cannot act, however, except with the recommendation of three of the four members of the Board of Pardons.

The most dramatic exercise of this power is, of course, in the capital case. The Board then must decide whether the criminal is to be executed or whether the sentence is to be commuted from a death sentence to one of life imprisonment.

However, the Board of Pardons is continuously concerned with the more or less routine request for a commutation of sentence. An inmate, for example, is sentenced from 10 to 20 years. As we will explain later in the section on parole, this inmate would have to serve at least 10 years before he was eligible for parole consideration. Through the Board of Pardons, however, he may apply at any time for a commutation of his minimum term. If the

Board of Pardons acts favorably and the Governor follows the recommendation, the 10-year term may be commuted to a lesser one. The inmate then becomes eligible for parole consideration after expiration of his new minimum term.

In some cases, an inmate or a man who already has served his sentence may appeal to the Board of Pardons for a pardon. The reasons for granting such clemency must be exceptional, but if it is granted, the Governor's action wipes out all record of the crime.

The Board of Pardons serves a very necessary function in government and the concept is entitled to support. Later in our discussion, we will explain where its work concerns the Board of Parole. At this point, however, it is necessary to remember only two points:

1. The Board of Pardons is a constitutional board separate and distinct from the Board of Parole, both in composition and in function.
2. The Governor, on recommendation of the Board of Pardons, actually has the power to change the sentence imposed by the court.

## **PROBATION IS NOT PAROLE**

Although there are points of similarity, probation and parole are different functions. Probation is administered by the court. It is an order and not considered a sentence. The offender is ordered to remain for a certain specified time under the supervision of a probation officer assigned by the court. No imprisonment is involved but in some cases the offender may have been detained awaiting trial. If the offender obeys the rules, he may remain on the street. A violation of probation, however, may result in his being brought again before the court for further disposition, which may mean a sentence to imprisonment.

The late President Calvin Coolidge commented:

"Justice requires as strongly the saving of that which is good, as it does the destruction of that which is evil. The work the probation officers are doing is saving that which is good in the individual, along with the correction of that which is evil. Probation is the right hand in the administration of Justice."

The Wickersham Commission report of 1931 described the value of probation as follows:

"No man should be sent to a penal institution until it is definitely determined that he is not a fit subject for probation. To this end it is urged that every effort be made to broaden probation and provide more and better probation supervision. With adequate probation staffs the number of persons who might be placed on probation with success can be materially increased."

Pennsylvania is one of those states that has not utilized probation to its fullest extent. Only about 19 per cent of the felony cases coming before the courts are placed on probation. (See Report on Probation Services in Pennsylvania by the National Probation and Parole Association.)

Probation and parole officers, thus, have very similar duties. However, the probationers have not served a prison term, whereas the parolees all have served part of their sentences in prison.

Probation services both for adults and juveniles are under the county courts with supervision by the county probation officers. However, some special cases may be assigned to the Pennsylvania Board of Parole for supervision.

Under the Parole Act, Section 25, the court may grant probation in adult cases and then assign the probationers to the Board of Parole for supervision. Prior to 1958, the service was not used to any great extent, but since that time the number of special probation cases under Board of Parole supervision has increased 300 per cent.

The special probation cases are supervised in the same manner as parolees but the court does not release jurisdiction. If the probationer fails, the Board of Parole can only recommend to the court that action be taken. The court has the final decision.

## PAROLE IN PENNSYLVANIA

Parole is a conditional release from prison under which the inmate is permitted to serve part of his sentence on the street under the supervision of a parole agent or a parole officer. It is based on three fundamentals:

1. Remission of part of the sentence imposed by the court on the basis of certain conditions, one of which always is good conduct while in prison;
2. A contract or agreement between the paroling authority and the prisoner, violation of which will result in his return to prison, and
3. Provision for supervision of those released under parole conditions.

The basic law providing for parole of prisoners was passed in Pennsylvania in 1909. It provided for the parole of State penitentiary cases by the Governor upon the recommendation of the board of trustees of the institution and the Board of Pardons.

A further act in 1911 extended parole authority to the County Courts of Quarter Sessions by granting them power to parole and re-parole all persons sentenced to county prisons.

The system was drastically changed in 1941 when the Legislature created the Pennsylvania Board of Parole "to create a uniform and exclusive system for the administration of parole in the Commonwealth." The jurisdiction of the Board was limited to adults who have been sentenced to terms of two years or more.

The courts retained their power to parole other adults sentenced to less than two years.

## **THE PENNSYLVANIA BOARD OF PAROLE**

The Pennsylvania Board of Parole is an independent administrative agency under the Governor. The members are appointed by the Governor by and with the consent of two-thirds of all the members of the Senate. They serve four-year terms and may not hold any other office or position during tenure.

The Board is granted exclusive power to parole and reparole, commit and recommit for violation of parole, prisoners from any state or county penal institution in Pennsylvania when the sentence is imposed for a maximum term of two years or more.

Nine district offices have been established to supervise the released parolees. They are located at Philadelphia, Pittsburgh, Harrisburg, Wilkes-Barre, Williamsport, Erie, Butler, Allentown and Altoona.

The Parole Act specifically forbids either the Board or any employe from engaging in any form of political activity, nor may they solicit or contribute to any political party or cause. It also provides that all employes, except the Secretary of the Board and the nine district supervisors must be chosen by a merit system. Consequently, all employes, with these exceptions, are named through the procedures of the State Civil Service Commission.

## **Types of Sentences under Board Jurisdiction**

When an inmate receives a sentence of more than two years, he generally will receive an indeterminate sentence. However, there are other sentences which Pennsylvania courts impose, including the flat and general sentences.

An indeterminate sentence has a minimum and maximum set by the court. For example, a sentence of from 5 to 10 years would be an indeterminate sentence. The 5 years would be the minimum, and the Board cannot parole the inmate before the expiration of that minimum. If the inmate is paroled, he remains under the jurisdiction and supervision of the Board until he completes his maximum, unless the maximum is commuted by a separate and distinct action by the Governor upon recommendation of the Board of Pardons.

Sometimes a court sentences an offender to a flat or definite term in a county prison. A flat sentence of five years is an example. In such a case, the Board has power to parole at any time upon application of the prisoner or on its own motion. However, as a matter of policy, the Board does not consider such cases until they have served one-half of the sentence.

The general sentence is imposed in cases sentenced to the Pennsylvania Industrial School and the Industrial Home for Women at Muncy. The court imposes neither a minimum nor a maximum, but for administrative purposes and to avoid the risk of illegal detention, the institution records the maximum provided for the particular crime committed. However, no sentence to the Pennsylvania Industrial School may be for longer than six years. The Board has power to parole at any time.

It is important to note that in no case may the Board change any sentence imposed by the court. The Board's jurisdiction is limited by the Parole Act to exercise its discretion to parole at the specified times indicated for the different type sentences, and the inmate must then serve the balance of his time under parole supervision.

## **How the Board Functions**

When an offender with a sentence of two years or more is committed to any State or county prison, the superintendent or warden is charged with the responsibility of informing the Board. The notification form is received

at Central Office and a parole number is assigned to the case and a file opened. From that time, all correspondence and other information relative to the case is placed in the file. Letters are sent to the family, the victim of the offense and others soliciting information about the offender so that the Board has such data on hand when the inmate appears for his hearing.

## The Board Hears the Case

Approximately two or three months prior to the expiration of the minimum term, the inmate is furnished with an application for parole. He must fill out the form in his own handwriting.

This brings the case to the Board and it is docketed for interview. At least two Board members interview the inmate in most cases. The session is one of the most important functions of the Board. The members must weigh carefully the risk of liberating the offender. The most important consideration is the protection of Society—will the community benefit more by holding the inmate for further incarceration, or will it be safe to release him under supervision? The rehabilitation of the inmate also is very important, but it always must be secondary to the protection of Society.

Comments on the potential parolee are solicited from the court and the district attorney. The Board then meets in executive session and the decision is made to grant or deny parole. In either event, the Board never loses its jurisdiction over the case until the maximum sentence is served. If he is paroled, the inmate will serve the duration of his sentence on the street under supervision, but he must observe the rules and conduct himself as a good citizen. If the Board declines parole, his case may be considered later by the Board.

The Board sets aside the third week of each month for personal interviews with attorneys, the family of the inmate or any other persons interested in a case. However, there is absolutely no necessity for an inmate to engage an attorney or to pay any fees to bring his or her case before the Board.

Parole is not clemency. It is part of the rehabilitative process. The courts have held that parole is not a right, but the Board never denies any inmate the opportunity to be heard when he is eligible.

## How the Board Decides

Perhaps the best way to describe how the Board functions would be to cite an example. The names have been changed, but the facts of the case of Tommy Tomkins are as the Board found them.

Tomkins was 28 years old and an inmate of Western State Penitentiary at the time of his first Board interview in 1953. He had been convicted and sentenced by the Cambria County Court in 1948 to a term of not less than 5 nor more than 15 years on charges of burglary, receiving stolen goods and violating the Uniform Firearms Act. His previous delinquencies included:

- 8- 6-36 Police Department, Northtown--Breaking and Entering--  
5 years probation
- 11- 9-38 Police Department, Northtown--Attempted Holdup--Placed  
on probation with an aunt--Ran away 1-10-39--Returned  
1-11-39--Absconded again 11-20-39
- 11-29-39 Philadelphia Protectory--Runaway and Larceny--Absconded  
again 9-30-40--Returned 10-1-40--Paroled to parents 12-21-40
- 3-21-41 Pennsylvania Training School, Morganza--Delinquency--  
Paroled 8-21-42
- 1-13-43 Federal Reformatory--National Motor Vehicle Transportation  
Act--3 years 5 months--Paroled 2-2-45, then probation until  
5-21-46
- 3-20-46 Pennsylvania Industrial School--Burglary--Paroled 4-3-48--  
Violated by present offense.

Tomkins was the oldest of six children of a coal miner father and a mother whose mental condition was such that she could not cope with the problems of her family. Home conditions were very poor and the home was very dirty. Parolee was born in 1925. When he was 14 months old he was seriously ill but the nature of the illness is not known. He had a heart condition attributed to rheumatic fever at the age of 12 or 16.

The delinquency pattern started at the age of 11. Prison psychologists now describe him as "an habitual criminal for whom crime, poor

associates and poor leisure habits seem to be a form of compensation for a feeling of inferiority and inadequacy." Although prison officials now recommend him for parole and point to a good institutional record, they were somewhat cautious.

"His adjustment under conditions of less strict supervision, however, is open to question since he has shown a tendency to react impulsively in times of stress," the record stated.

Tomkins was paroled from the Industrial School in March, 1948. In July he and an accomplice burglarized a photographic supply company and took \$1,400 in cash and \$1,000 worth of equipment. Two months later they broke into private homes and stole three pistols and a rifle. They then burglarized a tavern and stole three more pistols, a rifle and a box of shells. He and one accomplice were arrested while driving a stolen automobile. The entire arsenal of stolen weapons, plus the bayonet, was found in the car.

During Tomkins' first interview with the Board members in 1953, the members knew from the record the circumstances of his crime and of his violation of parole. They also learned that he and his accomplices had planned a career of robbery and burglary while confined at the institution. Tomkins, on the record, was not what the Board could call a good risk. His attitude during the interview was not good. He was rather glib about the whole affair, minimized the gravity of his offenses and did not seem disturbed about his poor efforts at self-improvement. He blamed his heart condition for all his troubles.

Tomkins was not ready for parole. Society would benefit more by his incarceration, at least, for the time being. For the reasons stated above, parole was denied.

Six months later, two Board members again were seated at a table at the penitentiary when Tomkins was called before them. He entered the room and took a seat at the table facing the interviewers. The glib and arrogant attitude seemed gone. The institution records indicated improvement in conduct and performance. As he talked with the Board members, he seemed to have developed insight into his extensive criminal behavior. He apparently had benefited by the previous denial of parole.

The Board felt he should now be given a chance to perform on parole. His subsequent history proved the Board's decision was correct. He had an

excellent record for five years on parole, he married, advanced rapidly in his job and was respected in the community.

## A Trained Parole Agent Takes Over

Before the inmate is released, he should have a parole plan consisting of a home, a job and a parole adviser. No person is denied parole because he does not have an adviser, and, in certain cases, the Board releases without employment if there are indications that the inmate has savings or a family willing to keep him until he finds a job.

When the Board grants parole, the inmate signs his agreement. He is released to the community and instructed to report immediately to the appropriate district office. Ordinarily, the parolee is released to his home community, but if he has a better plan and better opportunities in another town, he may be allowed to go there.

At the district office, he meets the parole agent who will supervise him. The agent already is familiar with the parolee's background and has investigated his plan. The agent then supervises the parolee by visiting him at home, by contacting his employer, his parole adviser and any other persons familiar with his behavior. Regular reports are submitted to the Central Office.

If he observes his parole rules, the parolee will remain under active supervision until his maximum sentence expires, unless it is commuted earlier by a Pardon Board action. If he violates his parole, the parolee may be arrested by the agent and returned to prison by the Board.

If returned, the case could be reparoled, but statistical surveys indicate that recidivism is extremely high among reparole cases. The Board has tightened reparole releases so a parolee returned once for parole violation will find it more difficult to be released again.

## Release from Parole

If the parolee was sentenced to an indeterminate sentence, he must remain on parole until the expiration of his maximum. The same applies for those

sentenced under flat or definite sentences. In general sentence cases, however, where the court has imposed neither a minimum nor a maximum, the maximum is determined by the statute for the offense. The Board can terminate parole at any time prior to the expiration of the maximum. The Board has adopted a policy of concluding supervision in general sentences after three years of successful supervision.

As we previously stated, the Board has no authority to change a sentence. This would be a hardship in many cases, particularly long-termers and lifers, if there were no other means of taking the parolee off supervision. The Board has found that supervision has little value if a parolee indicates over a long period of time that he has adjusted. Consequently, the Board presents cases to the Board of Pardons for commutation of the maximum sentence when the parolee has finished five years of successful supervision in all but commuted life sentences, and ten years of successful adjustment for lifers. It recommends ten to fifteen such sentences to the Board of Pardons monthly. Since the Board of Pardons does have the power to recommend a change of sentence to the Governor, the cases usually are closed by this procedure.

### **The Responsibility of the Community**

The attitude of the community toward the released prisoner is a very important factor in his success or failure on parole. If he is made to feel that he belongs, if he is given a chance to show what he can do rather than being rebuffed as an ex-con, he is more likely to show his better side and an eagerness to co-operate and please.

Ninety-five per cent of all inmates sentenced to institutions return to the community from which they were sentenced. It is through parole and its supervisory functions that the way is paved for community acceptance and a successful adjustment.

In addition, the community has a financial investment in the parolee. Many do not realize that it costs about \$1,843 to maintain a man in a State institution per year as compared with \$236 as a cost of parole supervision. Also, the parolee is now a wage earner and a taxpayer. He is supporting his family, which in all probability was on public assistance rolls while he was incarcerated. A Board survey indicated that during the year 1958, parole resulted in a \$137,000 reduction of public assistance grants.

All in all, both in humanitarian and money values, the community investment is most substantial.

## **How Can the Church and the Citizen Aid Parole Services?**

How can the good citizen and the Church in the community help the State to achieve the moral and pecuniary gains inherent in a rehabilitation program for offenders? We, as the Board of Parole, offer the following suggestions:

1. Be tolerant and understanding of parolees. We should realize that no rehabilitation is possible if we do not offer a helping hand to the offender who is attempting to regain a position of respect in the community.
2. The parolee's greatest need is a job, a position whereby he may maintain himself and his family. Community organizations, and particularly the Church, can greatly assist probation and parole services by setting up some kind of an employers' register for parolees, or, more bluntly, for ex-convicts. The job is the most important tool to successful parole and probation.
3. The clergy, the members of their churches and their specialized groups, the members of other organizations in the community and the private citizen all can offer their services as parole advisers for those on parole. Or they may offer similar services to the court and the probation services if needed. The parole adviser is a citizen of the community who voluntarily offers his services to act as a friend and counselor to the parolee. Unless a parolee has a good adviser, his chances of successful adjustment are severely limited. If the Board had a list of potential advisers, it could assist inmates having difficulty in finding an adviser or parolees who lost their advisers through moving from the community or other reasons. Legally, the adviser is in no way responsible for the acts or the offenses that a parolee may commit.
4. All citizens, and particularly Church members and members of other public-spirited organizations, should assume the duty of becoming informed about probation and parole. A visit to the local probation

or parole office to become acquainted with its work and to offer assistance would be a step in the right direction.

5. Perhaps an invitation to the parole or probation agency to send a speaker to groups within the church or within the community would better acquaint the citizens with problems and possibly aid in solutions.
6. All of these steps are aids in the battle against crime. But the most important aid is the understanding and support which the individual gives to the efforts of his community to prevent crime and to rehabilitate the offender. Tolerance and understanding are the paramount needs--the love and respect of your neighbor and the offer of assistance to those in need.



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